IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 17TH AUGUST 2007 / 26TH SRAVANA 1929

Crl.MC.No. 2628 of 2007()

CC.1043/2003 of JUDL. MAGISTRATE OF FIRST CLASS COURT-II, ATTINGAL

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PETITIONER: 7TH ACCUSED

HAREENDRAN, S/O RAVEENDRAN,
AGED 33 YEARS, RESIDING AT K.K.NIVAS,
IDAVILAKOM, MURUKKUMPUZHA P.O.,
THIRUVANANTHAPURAM.

BY ADV. SRI.AYYAPPAN SANKAR

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

BY PUBLIC PROSECUTOR ADV.SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 17/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

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Crl.M.C. No.2628 Of 2007

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Dated this the 17th day of August, 2007

ORDER

The petitioner along with 18 other accused faced indictment for offences punishable, inter alia, under Secs.447, 354 and 427 read with 149 IPC and Sec.3(2)(e) of the P.D.P.P.Act. The crux of the allegations against the accused persons, including the petitioner is that they were members of an unlawful assembly, who trespassed into the room of the President of the local Panchayat and indulged in the culpable overt acts in pursuance of the common object to the unlawful assembly. The petitioner was not available for trial. Some of the co-accused, who were available, were proceeded against in the trial conducted. The learned Magistrate came to the final conclusion that the prosecution has not succeeded in proving the offences alleged against them beyond reasonable doubt. They were held entitled to the benefit of doubt and were acquitted. The case against the petitioner and some other co-accused was split up. The petitioner has now come to this Court with a prayer that the

powers under Section 482 Cr.P.C may be invoked in favour of the petitioner to bring to premature termination the split up proceedings as against the petitioner. It is submitted that no useful purpose is likely to be achieved by continuing with the prosecution. It is prayed that the proceedings may be quashed.

2. I find no merit in the prayer at all. I have been taken through the judgment of acquittal in the trial already against the co-accused. The decision in **Moosa Vs.Sub Inspector of Police** (2006(1) KLT 552) is squarely applicable. It is by now trite that the fact that the co-accused, who faced trial, were found not guilty and acquitted on the basis of the materials available in the trial held against him is no reason by itself to secure to the absconding co-accused any benefit or advantage. I have been taken through the findings in paragraphs 5,6,7and 8 of the judgment of acquittal. I find absolutely no features in this case which can exclude this case from the sweep of the decision in **Moosa Vs.Sub Inspector of Police** (2006(1) KLT 552). In fact, some of the witnesses had supported the prosecution case and there is no finding by the learned Magistrate that the incident as alleged had not taken place at all. Accused, who faced trial,

were conceded the benefit of reasonable doubt. I do not, in these circumstances, find any merit in the prayer for quashing of the proceedings against the petitioner. The learned counsel for the petitioner submits that a warrant of arrest issued by the learned Magistrate is now chasing the petitioner. According to the petitioner, he is absolutely innocent. He is willing to surrender before the learned Magistrate and claim regular bail. But he apprehends that his application for regular bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. He further prays that appropriate directions under Section 438/482 Cr.P.C may be issued in favour of the petitioner.

3. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider such application on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued in **Alice**

George v. The Deputy Superintendent of Police [2003(1) KLT 339].

4. This application is, in these circumstances, dismissed, but with the specific observation that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously - on the date of surrender itself, unless there are compelling reasons.

5. The learned counsel for the petitioner prays that there may be a direction to the learned Magistrate to consider the plea of discharge which the petitioner wants to raise before the lower court under Sec.239/240 Cr.P.C. Needless to say, the learned Magistrate must expeditiously consider the said plea for discharge at the stage of Sec.239/240 Cr.P.C.

(R.BASANT, JUDGE)

sj